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Company, LLC and Pulte Development
Corporation

7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA, PHOENIX DIVISION**

10 Pulte Home Company, LLC, a
11 Michigan limited liability corporation;
and Pulte Development Corporation, a
12 Michigan corporation,

13 Plaintiffs,

14 v.

15 United Specialty Insurance Company, a
Delaware corporation; Midwest Family
16 Mutual Insurance Company, an Iowa
corporation; The Cincinnati Insurance
17 Company, an Ohio corporation; The
Cincinnati Casualty Company, an Ohio
18 corporation; Cincinnati Indemnity
Company, an Ohio corporation; Knight
19 Specialty Insurance Company, a
Delaware corporation; Ironshore
20 Indemnity Incorporated, a Minnesota
corporation,

21 Defendant.
22

Case No.

PLAINTIFFS' COMPLAINT FOR:

**(1) DECLARATORY JUDGMENT;
AND**

(2) BREACH OF CONTRACT.

23
24 Plaintiffs Pulte Home Company, LLC and Pulte Development Corporation
25 (collectively, "Plaintiffs") hereby allege as follows:
26

27 **PARTIES**

28 1. At all times mentioned herein, Pulte Home Company, LLC was and is a

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1 Michigan limited liability company with its principal place of business in Georgia.

2 2. At all times mentioned herein, Pulte Development Corporation was and
3 is a Michigan corporation with its principal place of business in Georgia.

4 3. Plaintiffs are informed and believe, and on that basis allege, that United
5 Specialty Insurance Company (“USIC”) was and is a Delaware corporation with its
6 principal place of business in Texas.

7 4. Plaintiffs are informed and believe, and on that basis allege, that
8 Midwest Family Mutual Insurance Company (“Midwest Family”) was and is an
9 Iowa corporation with its principal place of business in Iowa.

10 5. Plaintiffs are informed and believe, and on that basis allege, that The
11 Cincinnati Specialty Underwriters Insurance Company (“Cincinnati”) was and is a
12 Delaware corporation with its principal place of business in Ohio.

13 6. Plaintiffs are informed and believe, and on that basis allege, that Knight
14 Specialty Insurance Company (“KSIC”) was and is a Delaware corporation with its
15 principal place of business in California.

16 7. Plaintiffs are informed and believe, and on that basis allege, that
17 Ironshore Indemnity Insurance Company (“Ironshore”), a Minnesota corporation
18 with its principal place of business in the state of New York.

19 **JURISDICTION AND VENUE**

20 8. This Court has original jurisdiction over this action founded on
21 diversity of citizenship pursuant 28 U.S.C. § 1332, because the matters in
22 controversy exceed \$75,000.00 per defendant, exclusive of interest and costs, and
23 because complete diversity exists between Pulte and Defendants.

24 9. Venue is proper in this Court in accordance with 28 U.S.C. § 1391.

25 **GENERAL ALLEGATIONS**

26 **The Trailside at Happy Valley Project**

27 10. Pulte is a homebuilder that participated in the construction of a
28 residential project known as the Trailside at Happy Valley community (the

1 “Project”), which is located in Peoria, Arizona.

2 11. Pulte performed no work on the Project; instead, subcontractors
3 performed all of the work.

4 12. Austin Electrical (“Austin”) subcontracted with Pulte to, among other
5 things, perform electrical work at the Project.

6 13. Brewer Plumbing (“Brewer”) subcontracted with Pulte to, among other
7 things, perform plumbing work on the Project.

8 14. Circle B Grading (“Circle B”) subcontracted with Pulte to, among other
9 things, perform grading work on the Project.

10 15. Metric Roofing (“Metric”) subcontracted with Pulte to, among other
11 things, perform roofing labor and install roofing systems on the Project.

12 16. Paul Johnson Drywall (“Paul Johnson”) subcontracted with Pulte to,
13 among other things, perform drywall work on the Project.

14 17. Poco Verde Pools & Landscaping (“Poco Verde”) subcontracted with
15 Pulte to, among other things, perform landscaping work on the Project.

16 18. R-Stucco, LLC (“R-Stucco”) subcontracted with Pulte to, among other
17 things, perform lathe/stucco work on the Project.

18 19. Rudolfo Brothers (“Rudolfo”) subcontracted with Pulte to, among other
19 things, perform lathe/stucco work on the Project.

20 20. Wallcon Roconcrete (“Wallcon”) subcontracted with Pulte to, among
21 other things, perform foundation/flatwork labor on the Project.

22 21. XO Windows (“XO”) subcontracted with Pulte to, among other things,
23 install window systems on the Project.

24 22. Younger Brothers (“Younger”) subcontracted with Pulte to, among
25 other things, perform framing labor on the Project.

26 **The USIC Policies**

27 23. Austin, Circle B, Metric, Paul Johnson, Poco Verde, R-Stucco,
28 Rudolfo, Wallcon, and XO performed work at the Project pursuant to one or more

written subcontracts that it entered into with Pulte.

24. Each subcontract required Austin, Circle B, Metric, Paul Johnson, Poco Verde, R-Stucco, Rudolfo, Wallcon, and XO to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name Pulte and its affiliates as additional insureds under those insurance policies.

25. Austin, Circle B, Metric, Paul Johnson, Poco Verde, R-Stucco, Rudolfo, Wallcon, and XO obtained commercial general liability policies from USIC (the “USIC Policies”):

Insurer	Policy Number(s)	Policy Period(s)	Named Insured	Additional Insured
USIC	BVO1412682	3/14/14-3/14/15	Austin	Pulte
	BVO1523350	3/14/15-3/14/16		
	BVO1533468	6/14/14-3/14/16		
	BVO1633618	3/14/16-12/1/16		
	ATN-SF1711271	12/1/17-12/1/18		
	ATN-SF1823357	12/1/18-12/1/19		
USIC	BVO1332391	10/15/13-10/15/14	Circle B	Pulte
	BVO1443073	10/15/14-10/15/15		
	BTO1996972	8/4/16-10/1/16		
	BVO1674170	10/1/16-10/1/17		
	ATN-ATL1780646	10/1/17-10/1/18		
	ATN-ATL1890919	10/1/18-10/1/19		
	ATN-ATL19101816	10/1/19-10/1/20		
	ATN20115559	10/1/20-10/1/21		
	ATN21127274	10/1/21-10/1/22		

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USIC	BVO1432778	5/1/14-5/1/15	Metric	Pulte
	BVO1543411	5/1/15-5/1/16		
	BVO1653638	5/1/16-5/1/17		
	ATN-ATL1760349	5/1/17-5/1/18		
USIC	ATN-SF1750422	4/1/17-4/1/18	Paul	Pulte
	ATN-SF1861698	4/1/18-4/1/19	Johnson	
USIC	ATN-SF1710598	9/1/17-9/1/18	Poco Verde	Pulte
	ATN-SF1821498	9/1/18-9/1/19		
	ATN-SF1935123	9/1/19-9/1/20		
	ATN-2046805	9/1/20-9/1/21		
USIC	ATN-SF1710888	8/1/17-8/1/18	R-Stucco	Pulte
	ATN-SF1823074	8/1/18-8/1/19		
USIC	BTO1416869	5/15/14-5/15/15	Rudolfo	Pulte
	BTO1638674	8/4/16-5/15/17		
	ATN-SF1740605	5/15/17-5/15/18		
	ATN-SF1851871	5/15/18-5/15/19		
	ATN-SF1964507	5/15/19-5/15/20		
USIC	ATN-SF1730971	8/25/17-8/25/19	Wallcon	Pulte
	ATN-SF1843151	8/25/18-8/25/19		
	ATN-SF1955068	8/25/19-8/25/20		
	ATN2066777	8/25/20-8/25/21		
USIC	BVO1312053	2/21/13-2/21/14	XO	Pulte
	BVO1422621	2/21/14-2/21/15		
	BVO1533210	2/21/15-2/21/16		
	BVO1643568	2/21/16-2/21/17		
	ATN-ATL1750053	2/21/17-2/21/18		
	ATN-ATL1860909	2/21/18-2/21/19		

	BTN1814366	2/21/18-2/21/19		
	ATN-ATL1961771	2/21/19-2/21/20		
	BTN1925098	2/21/19-2/21/20		
	ATN 2075576	2/21/20-2/21/21		
	ATN2187350	2/21/21-2/21/22		

26. The USIC Policies were endorsed to cover Pulte as an “additional insured” with respect to liability arising out of Austin, Circle B, Metric, Paul Johnson, Poco Verde, R-Stucco, Rudolfo, Wallcon, and XO’s work.

27. The coverage afforded under the USIC Policies requires Defendant USIC to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of Austin, Circle B, Metric, Paul Johnson, Poco Verde, R-Stucco, Rudolfo, Wallcon, and XO’s work or operations.

The Midwest Family Policies

28. Brewer performed work at the Project pursuant to one or more written subcontracts that it entered into with Pulte.

29. Each subcontract required Brewer to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name Pulte and its affiliates as additional insureds under those insurance policies.

30. Brewer obtained commercial general liability policies from Midwest Family (the “Midwest Family Policies”):

Insurer	Policy Number	Policy Period	Named Insured	Additional Insured
Midwest Family	ACAZ0560102873	9/24/14-9/24/21	Brewer	Pulte

31. The Midwest Family Policies were endorsed to cover Pulte as an “additional insured” with respect to liability arising out of Brewer’s work.

32. The coverage afforded under the Midwest Family Policies requires Defendant Midwest Family to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of Brewer’s work or operations.

The Cincinnati Policy

33. Paul Johnson performed work at the Project pursuant to one or more written subcontracts that it entered into with Pulte.

34. Each subcontract required Paul Johnson to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name Pulte and its affiliates as additional insureds under those insurance policies.

35. Paul Johnson obtained commercial general liability policies from Cincinnati (the “Cincinnati Policy”):

Insurer	Policy Number	Policy Period	Named Insured	Additional Insured
Cincinnati	CSU0130165	4/1/19-4/1/20	Paul Johnson	Pulte

36. The Cincinnati Policy was endorsed to cover Pulte as an “additional insured” with respect to liability arising out of Paul Johnson’s work.

37. The coverage afforded under the Cincinnati Policy requires Defendant

Cincinnati to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of Paul Johnson's work or operations.

The KSIC Policies

38. Circle B, Rudolfo, and Wallcon each performed work at the Project pursuant to one or more written subcontracts that they entered into with Pulte.

39. Each subcontract required Circle B, Rudolfo, and Wallcon to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name Pulte and its affiliates as additional insureds under those insurance policies.

40. Circle B, Rudolfo, and Wallcon obtained commercial general liability policies from KSIC (the "KSIC Policies"):

Insurer	Policy Number(s)	Policy Period(s)	Named Insured	Additional Insured
KSIC	KSVENS150026505	10/15/15- 10/15/16	Circle B	Pulte
KSIC	KSVENS151118101 KSVENS161165102	5/15/15-5/15/16 5/15/16-8/4/16	Rudolfo	Pulte
KSIC	KSVENS151115800 KSVENS161161801	5/15/15-5/15/16 5/15/16-5/15/17	Wallcon	Pulte

41. The KSIC Policies were endorsed to cover Pulte as an "additional insured" with respect to liability arising out of Circle B, Rudolfo, and Wallcon's work.

42. The coverage afforded under the KSIC Policies requires Defendant KSIC to defend and indemnify Pulte against all claims that allege (duty to defend) and result in (duty to indemnify) liability for covered property damage or bodily

injury arising out of Circle B, Rudolfo, and Wallcon's work or operations.

The Ironshore Policies

43. Younger performed work at the Project pursuant to one or more written subcontracts that it entered into with Pulte.

44. Each subcontract required Younger to maintain commercial general liability insurance with minimum limits of \$1,000,000 combined single limit per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate, and to name Pulte and its affiliates as additional insureds under those insurance policies.

45. Younger obtained commercial general liability policies from Ironshore (the "Ironshore Policies"):

Insurer	Policy Number	Policy Period	Named Insured	Additional Insured
Ironshore	AGZ0000100	7/1/11-7/1/12	Younger	Pulte
	AGZ0000101	7/1/12-7/1/13		
	AGZ0000102	7/1/13-7/1/14		
	AGZ0000103	7/1/14-7/1/15		
	AGZ0000104	7/1/15-7/1/16		
	AGZ0000105	7/1/16-7/1/17		
	AGZ0000106	7/1/17-7/1/18		
	AGZ0000107	7/1/18-7/1/19		
	AGZ0000108	7/1/19-7/1/20		
	AGZ0000109	7/1/20-7/1/21		

46. The Ironshore Policies were endorsed to cover Pulte as an "additional insured" with respect to liability arising out of Younger's work.

47. The coverage afforded under the Ironshore Policies requires Defendant Ironshore to defend and indemnify Pulte against all claims that allege (duty to

defend) and result in (duty to indemnify) liability for covered property damage or bodily injury arising out of Younger's work or operations.

The Petrisor Claims

48. In or around April 26, 2021, 13 homeowners in the Trailside at Happy Valley community in Peoria, Arizona initiated arbitration proceedings against Pulte, entitled *Gilberto and Kim Cosme, et al. v. Pulte Home Company, LLC, et al.*, Case No. 01-21-0003-5997, pending before the American Arbitration Association ("Petrisor"), alleging property damage to their homes as a result of defective construction, including but not limited to, property damage to and arising out from the construction of the assembly of stucco systems, foundation systems, concrete flatwork, grading, landscaping, drywall systems, door systems, window systems, plumbing, painting, electrical, framing and roofing systems.

49. The *Petrisor* homeowners subsequently amended their Demand for Arbitration to add additional homeowners, bringing the total to 27 homeowners as of the March 23, 2022, Third Amended Demand for Arbitration.

50. The *Petrisor* homeowners seek at least \$300,000 in damages from Pulte for property damage arising out of the work, operations, and/or ongoing operations of the Defendant insurers' named insured subcontractors listed herein.

51. As a result of the *Petrisor* Claim, Pulte has incurred and will continue to incur significant costs, including, but not limited to, forensic, investigative, and repair costs, attorneys' fees and other expenses.

52. The *Petrisor* claimants are seeking damages from Pulte for property damage arising out of and/or resulting from the Defendants' named insured subcontractors' work on the Project. If the homeowner-plaintiffs are successful in obtaining an award against Pulte, Pulte will have incurred liability arising out of and/or resulting from the work of the Defendants' named-insured subcontractors.

53. Pulte tendered its defense and indemnity of the *Petrisor* Claims to each of the Defendant insurers under the insurance policies listed herein.

1 54. USIC agreed to participate in Pulte’s defense under the policies it
2 issued to Paul Johnson and XO. Cincinnati agreed to participate in Pulte’s defense
3 under the policy it issued to Paul Johnson. USIC and Cincinnati are referred to
4 herein as the “Participating Insurers” as to Pulte’s claims arising out of these
5 policies only.

6 55. Other than Participating Insurers, each and every other Defendant
7 rejected—or otherwise failed to respond to—Pulte’s tenders for defense and
8 indemnity of the *Petrisor* Claims, leaving Pulte with substantial unreimbursed
9 defense costs.

10 56. Pursuant to the insurance policies issued by the Defendants to their
11 respective named-insured subcontractors, as specified herein, the Defendants owe a
12 duty to pay all of the defense fees and costs that Pulte incurred and will continue to
13 incur in defending against the *Petrisor* Claims.

14 57. Pursuant to the insurance policies issued by the Defendants to their
15 respective named-insured subcontractors, as specified herein, the Defendants have a
16 duty to indemnify Pulte for any liability Pulte incurs as a result of the *Petrisor*
17 Claims for property damage that arises out of and/or that is caused in whole or in
18 part by the Defendants’ respective named insured subcontractors’ work.

19 58. The Defendants breached their duties by refusing to defend Pulte, or in
20 the case of the Participating Insurers, failing to fully defend Pulte. On information
21 and belief, Defendants misrepresented policy provisions and/or material facts related
22 to coverage, failed to make prompt payment of Pulte’s demands for reimbursement
23 of its defense costs, and/or otherwise failed to respond to Pulte’s tender of its
24 defense of the *Petrisor* Claims. As a result of Defendants’ conduct, Pulte has been
25 forced to expend significant resources defending itself against the *Petrisor* Claims.
26 As of the date of the filing of this Complaint, Pulte has incurred more than \$350,000
27 in attorneys’ fees and costs defending against the *Petrisor* Claims, and will continue
28 to incur significant expenses defending against the *Petrisor* Claims, which are

1 ongoing.

2 59. Upon information and belief, the Defendants failed to investigate or
3 timely respond to Pulte's tender of defense and indemnity, if they responded at all.

4 60. Upon information and belief, the Defendants failed to consider the
5 allegations in the pleadings, facts provided by Pulte, or facts easily discernable.

6 61. Pleading further and in the alternative, in addition to these specific
7 allegations based on insurance policy endorsements directly adding Pulte as an
8 additional insured to each policy issued by the Defendants and listed herein, each
9 policy listed herein above contained a provision or provisions the effect of which is
10 to allow Pulte to stand in the shoes of the Defendants' named-insured subcontractors
11 for purposes of coverage.

12 62. The above is not an exclusive list of the Defendants' potential liability
13 to Pulte as other theories of potential coverage and recovery may be apparent based
14 on the specific policies and/or specific actions of each Defendant.

15 **FIRST CAUSE OF ACTION**

16 **Declaratory Judgment**

17 (By Pulte Against All Defendants)

18 63. Pulte realleges the allegations contained in paragraphs 1 through 62
19 inclusive, and incorporates them by reference as though fully set forth herein.

20 64. Pulte is named as an additional insured or is a known third-party
21 beneficiary of each of the insurance policies issued by the Defendants listed herein.

22 65. An actual controversy has arisen and now exists between Plaintiffs, on
23 the one hand, and Defendants, on the other hand, in that Plaintiffs contend that it is
24 an additional insured under the policies listed herein, that Defendants owe a separate
25 and independent duty to promptly provide Plaintiffs with a full and conflict-free
26 defense of the *Petrisor* Claims, and that Defendants owe a duty to indemnify Pulte
27 for damages arising out of the work or operations of Defendants' named-insured
28 subcontractors.

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1 66. Plaintiffs are informed and believe that Defendants contend otherwise.

2 67. Pulte seeks a judicial resolution of the controversy and a declaration of
3 the following:

4 i. Pulte is an additional insured under the Defendants’ policies listed
5 herein;

6 ii. The Defendants have a duty to fully defend Pulte against the *Petrisor*
7 Claims; and

8 iii. The Defendants’ must indemnify Pulte for damages arising out of
9 the work or operations of Defendants’ named-insured subcontractors.

10 68. A declaratory judgment is both proper and necessary so that the
11 respective rights, duties, and obligations of Plaintiffs and Defendants may be
12 determined.

SECOND CAUSE OF ACTION

Breach of Contract

(By Pulte Against All Defendants)

16 69. Pulte realleges the allegations contained in paragraphs 1 through 68,
17 inclusive, and incorporates them by reference as though fully set forth herein.

18 70. Pulte requested that Defendants defend Pulte against the *Petrisor*
19 Claims under the insurance policies each of the Defendants issued to their respective
20 named-insured subcontractors, as described more fully above. Pulte has performed
21 all obligations owing under each of the policies in connection with its tender of
22 defense, and Pulte has satisfied all relevant conditions precedent.

23 71. Defendants have failed to discharge their contractual duties to defend
24 Pulte against the *Petrisor* Claims. More particularly, Defendants, with the exception
25 of the Participating Insurers: (1) breached their contracts by failing to promptly
26 respond to Pulte’s tenders, if they responded at all; (2) breached their contracts by
27 refusing to provide Pulte with a defense; and (3) breached their contracts by refusing
28

1 to fully investigate Pulte's tender.

2 72. The Participating Insurers have failed to discharge their contractual
3 duties to defend Pulte against the *Petrisor* Claims by failing to provide Pulte with a
4 full and complete defense.

5 73. As a direct and proximate result of Defendants' conduct as alleged in
6 this Complaint, Pulte has been damaged and will continue to be damaged in an
7 amount to be proven at trial.

8
9 **PRAYER**

10 WHEREFORE, Pulte prays for judgment against Defendants as follows:

11 1. **FIRST CAUSE OF ACTION:**

- 12 a. For declaratory relief as described above;
13 b. For all costs and expenses at the full extent permitted by law;
14 c. For pre-judgment interest and post-judgment interest at the full
15 extent permitted by law;
16 d. For attorneys' fees to the extent recoverable by applicable law;
17 and
18 e. For such other and further relief as the Court deems fair and
19 proper.

20 2. **SECOND CAUSE OF ACTION:**

- 21 a. For general and specific damages in an amount to be proven at
22 trial;
23 b. For punitive damages at the full extent permitted by law;
24 c. For all costs and expenses at the full extent permitted by law;
25 d. For pre-judgment interest and post-judgment interest at the full
26 extent permitted by law;
27 e. For attorneys' fees to the extent recoverable by applicable law,
28 which shall be taxed against the Defendants as costs, and

f. For such other and further relief as the Court deems fair and proper.

DATED: November 18, 2022

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